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3 UNITED STATES DISTRICT COURT
4 WESTERN DISTRICT OF WASHINGTON
5 AT SEATTLE

6 IN RE: PHENYLPROPANOLAMINE
7 (PPA) PRODUCTS LIABILITY
8 LITIGATION,

MDL NO. 1407

9 ORDER DENYING
10 DEFENDANT'S MOTION FOR
11 PROTECTIVE ORDER

12
13 This document relates to:

14 Crowe v. Bayer Corporation, et
15 al., No. C03-2706R
16
17

18 THIS MATTER comes before the court on the motion of defen-
19 dant Bayer Corporation for a protective order to stay discovery
20 pending a ruling on the parties' motions to dismiss and to
21 remand. The court has considered the parties' briefing and finds
22 and rules as follows:

23 This court has the authority to grant protective relief
24 under Fed. R. Civ. P. 26(c), which authorizes "any order which
25 justice requires to protect a party from annoyance, embarrass-
26 ment, oppression, or undue burden or expense, including . . .
that the disclosure or discovery not be had."¹ The district

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¹The defendant neglects to mention that Fed. R. Civ. P. 26(c) also requires that the party moving for the protective order submit certification "that the movant has in good faith conferred or attempted to confer with other affected parties in

1 court has broad discretion to control the course of discovery
2 under this rule. See *Little v. City of Seattle*, 863 F.2d 681,
3 685 (9th Cir. 1988).

4 The instant case was transferred to this court and docketed
5 as part of Multidistrict Litigation 1407, *In re*
6 *Phenylpropanolamine Products Liability Litigation*, in January
7 2004. The case was initially filed, however, in January 2003 -
8 over one year ago - and the motions to dismiss and to remand
9 underlying Bayer's request for a stay were filed in the U.S.
10 District Court for the District of Columbia in March and April of
11 2003, respectively. Under these circumstances, to add to the
12 delay that plaintiff has already experienced would be both unfair
13 and unnecessary. The court does not anticipate that a ruling on
14 the motions to remand and to dismiss will be long in coming.
15 Moreover, the discovery to which plaintiff at this point can only
16 be presumed to be entitled may, upon such ruling, prove to be
17 necessary after all. Given the balance of equities presented,
18 therefore, the court hereby DENIES defendant's motion for protec-
19 tive order.

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23 an effort to resolve the dispute without court action." This the
24 defendant has not done. In the absence of such certification,
25 the court can only presume that defendant has not, in fact,
26 attempted to resolve its dispute with the plaintiff without the
court's intervention. The court's denial of the motion for a
stay does not depend, however, on this procedural shortcoming,
but on the reasons articulated above.

ORDER

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1 DATED at Seattle, Washington this 2nd day of April, 2004.

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3 s/ Barbara Jacobs Rothstein
4 BARBARA JACOBS ROTHSTEIN
5 UNITED STATES DISTRICT JUDGE
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